

§ 143-215.77. Definitions.

As used in this Article, unless the context otherwise requires:

- (1) "Barrel" shall mean 42 U.S. gallons at 60 degrees Fahrenheit.
- (2) "Commission" means the North Carolina Environmental Management Commission.
- (3) "Secretary" shall mean the North Carolina Secretary of Environmental Quality.
- (4) "Discharge" shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil or other hazardous substances into waters of the State or into waters outside the territorial limits of the State which affect lands, waters or uses related thereto within the territorial limits of the State, or upon land in such proximity to waters that oil or other hazardous substances is reasonably likely to reach the waters, but shall not include amounts less than quantities which may be harmful to the public health or welfare as determined pursuant to G.S. 143-215.77A; provided, however, that this Article shall not be construed to prohibit the oiling of driveways, roads or streets for reduction of dust or routine maintenance; provided further, that the use of oil or other hazardous substances, oil-based products, or chemicals on the land or waters by any State, county, or municipal government agency in any program of mosquito or other pest control, or their use by any person in accepted agricultural, horticultural, or forestry practices, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the State, county, or local agency charged with authority over such uses, shall not constitute a discharge; provided, further, that the use of a pesticide regulated by the North Carolina Pesticide Board in a manner consistent with the labelling required by the North Carolina Pesticide Law shall not constitute a "discharge" for purposes of this Article. The word "discharge" shall also include any discharge upon land, whether or not in proximity to waters, which is intentional, knowing or willful.
- (5) "Having control over oil or other hazardous substances" shall mean, but shall not be limited to, any person, using, transferring, storing, or transporting oil or other hazardous substances immediately prior to a discharge of such oil or other hazardous substances onto the land or into the waters of the State, and specifically shall include carriers and bailees of such oil or other hazardous substances. This definition shall not include any person supplying or delivering oil into a petroleum underground storage tank that is not owned or operated by the person, unless:
 - a. The person knows or has reason to know that a discharge is occurring from the petroleum underground storage tank at the time of supply or delivery;
 - b. The person's negligence is a proximate cause of the discharge; or
 - c. The person supplies or delivers oil at a facility that requires an operating permit under G.S. 143-215.94U and a currently valid operating permit certificate is not held or displayed at the time of the supply or delivery.
- (5a) "Hazardous substance" shall mean any substance, other than oil, which when discharged in any quantity may present an imminent and substantial danger to the public health or welfare, as designated pursuant to G.S. 143-215.77A.
- (6) Repealed by Session Laws 1979, c. 981, s. 5.

- (7) "Department" shall mean the Department of Environmental Quality.
- (8) "Oil" shall mean oil of any kind and in any form, including, but specifically not limited to, petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances.
- (9) "Bailee" shall mean any person who accepts oil or other hazardous substances to hold in trust for another for a special purpose and for a limited period of time.
- (10) "Carrier" shall mean any person who engages in the transportation of oil or other hazardous substances for compensation.
- (11) "Oil terminal facility" shall mean any facility of any kind and related appurtenances located in, on or under the surface of any land, or water, including submerged lands, which is used or capable of being used for the purpose of transferring, transporting, storing, processing, or refining oil; but shall not include any facility having a storage capacity of less than 500 barrels, nor any retail gasoline dispensing operation serving the motoring public. A vessel shall be considered an oil terminal facility only in the event that it is utilized to transfer oil from another vessel to an oil terminal facility; or to transfer oil between one oil terminal facility and another oil terminal facility; or is used to store oil.
- (12) "Operator" shall mean any person owning or operating an oil terminal facility or pipeline, whether by lease, contract, or any other form of agreement.
- (13) "Person" shall mean any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.
- (14) "Pipeline" shall mean any conduit, pipe or system of pipes, and any appurtenances related thereto and used in conjunction therewith, used, or capable of being used, for transporting or transferring oil to, from, or between oil terminal facilities.
- (15) "Restoration" or "restore" shall mean any activity or project undertaken in the public interest or to protect public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil or other hazardous substances discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.
- (16) "Transfer" shall mean the transportation, on-loading or off-loading of oil or other hazardous substances between or among two or more oil terminal facilities; between or among oil terminal facilities and vessels; and between or among two or more vessels.
- (17) "Vessel" shall include every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and shall include, but shall not be limited to, barges and tugs; provided that the term "vessel" as used herein shall not apply to any pleasure, sport or commercial fishing vessel which has a fuel capacity of less than 500 gallons and is not used to transport petroleum, petroleum products, or general cargo.

- (18) "Waters" shall mean any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway, wetlands, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State, or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction. (1973, c. 534, s. 1; c. 1262, s. 23; 1977, c. 771, s. 4; 1979, c. 535, ss. 3-10; c. 981, ss. 3-5; 1979, 2nd Sess., c. 1209, ss. 1, 2; 1987, c. 827, s. 155; 1989, c. 656, s. 1; c. 727, s. 218(111); 1995, c. 377, s. 12; 1997-443, s. 11A.119(a); 2015-241, ss. 14.30(u), (v).)